* **HIGH COURT OF DELHI : NEW DELHI**

+ RSA No. 89 of 2007

% Judgment reserved on: 23rd March, 2007

Judgment delivered on: 30th March, 2007

Shri Hardam Singh
S/o Shri Munshi Ram,
R/o Village Ratan Garh,
Tehsil Sapla, District Rohtak
Haryana ..... Appellant

Through Mr. K.S. Singh with
Ms. Tripta, Advocates.

Vs.

1. Shri Rakesh Kumar
   S/o Late Shri Tej Pal Sharma

2. Shrimati Daya
   W/o Shri Ram Avtar Sharma
   D/o Late Shri Tej Pal Sharma

3. Smt. Kiran
   W/o Shri Ved Prakash Shrama
   D/o Late Shri Tej Pal Sharma

4. Kumari Sunita Sharma
   D/o Late Shri Tej Pal Sharma

5. Smt. Savitri Devi,
   W/o Shri Tej Pal Sharma

All R/o H. No. 370, Mohalla Doonger,
Shahdara, Delhi – 32 ..... Respondents

Through None.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

V.B. GUPTA, J.

The present appeal has been filed by the Appellant against the judgment dated 27th September, 2006 of Sh. Atul Kumar Garg, Additional District Judge, Delhi in RCA No. 06/06/05 vide which the judgment and decree dated 14th October, 2005 passed by Ms. Smita Garg, Learned Civil Judge, Delhi in suit No. 88/02/01 was up held.

2. The brief facts of the present case are that the respondents filed a suit for possession and damages against the present appellant claiming that they had become the owners of house No. 370, Mohalla Doonger, Shahdara, Delhi – 110032, after the death of Shri Tej Pal Sharma. Earlier a will was executed in favour of Shri Tej Pal Sharma by Smt. Munni Devi and they were granted a probate by the Court of District Judge, Delhi vide order dated 7th

September, 1970. The appellant filed an application for revocation of the said probate before the District Judge under Section 263 of Indian Succession Act, 1925 alleging therein that he (appellant) is related to the deceased Smt. Munni Devi but his objection was dismissed by District Judge, Delhi, vide order dated 27th November, 1975 in miscellaneous case No. 3/1971 holding therein that the present appellant and other claimant Shri Manohar Lal were not related to the deceased Smt. Munni Devi. According to respondents, the appellant had occupied one room and a portion of verandah in front of that room illegally as a trespasser and has been living with his family therein without any right, interest and title in the said property, simply with a view to snatch the property from the respondents by harassing them in one way or the other. The appellant in pursuance of his malafide designs and with a view to further harass the respondents and to compel them for giving up their rightful claim in respect of portion illegally occupied by him, filed a suit for seeking declaration to the effect that he (appellant) is nephew and legal heir of the deceased Smt. Munni Devi and also for

cancellation of her will in favour of Late Shri Tej Pal Sharma. That suit was also dismissed by the Court of Shri Satnam Singh, Sub Judge, Delhi vide the judgment and decree dated 4th November, 1978 holding that the suit was not maintainable being barred by time and in view of order dated 27th November, 1975 passed by the Probate court. The appellant herein, filed an appeal against order dated 4th November, 1978 and that was also dismissed and as such the respondents had filed the present suit for vacating and handing over the possession of the portion occupied by the appellant unauthorisedly and unlawfully to the rightful owners of the property.

3. The appellant contested the suit before the trial court on the ground that the deceased Shri Tej Pal Sharma was merely a tenant under the deceased Smt. Munni Devi. The appellant denied of any alleged will executed by Smt. Munni Devi and took the plea that the same is forged one. He further claimed that he is occupying the property for the last 15 years in his own right, and even since the period when Late Smt. Munni Devi was alive, she used to live with the appellant in the same room and having common

kitchen.

Following issues were framed by the trial court:-

> "1. Whether the suit has been properly valued for the purposes of court fee and jurisdiction? OPP
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> 2. Whether the suit is barred by limitation? OPD
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> 3. Whether the suit is barred by principles of estoppel, waiver and acquiescence? OPD
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> 4. Whether the plaintiff is not the owner of the property in suit? OPD
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> 5. Whether the defendant has been in uninterrupted adverse possession of the portion mentioned in the plaint as alleged? OPD
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> 6. Whether the defendant is the owner of the portion in question? OPD
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> 7. Whether plaintiff is entitled to recover the possession of the portion in question? OPD
>
> 8. Whether the plaintiff is entitled to recover damages/further damages? If so, at what rate and how much? OPP
> 9. Relief."

4. The trial court decreed the suit filed by the present respondents.

5. The appeal filed by the appellant was dismissed by the

First Appellate Court, which confirmed the findings of the trial court.

6. It has been contended by learned counsel for the appellant that the present suit filed by the respondents is barred by limitation. The litigation has been pending between the parties since 1968 whereas, the present suit was filed only in 1981 and no finding on this issue has been given by the trial court and the appellant is the owner by virtue of being in adverse possession.

7. The case of the appellant before the trial court is that he being the nephew and the only relative of Late Smt. Munni Devi, inherited the house in question after her death and thus became the owner thereof and in the same breath the appellant has also taken the plea that he has become the owner of the property by way of adverse possession as he has been residing therein for the last 15 years.

8. The appellant has not placed any document on record to show that he is in possession of property since 1967. Moreover, there has been litigation between the parties since 1970 when the respondents filed the probate petition before the District Judge. It is well settled that to

constitute the plea of adverse possession, the appellant has to plead that it must be actual, open, notorious, hostile, under claim or right, continuous and exclusive and maintained for the statutory period i.e. 12 years as prescribed under Article 65 of the Limitation Act. Mere possession of the suit property is not enough to take the plea that the possession is adverse, it must be hostile.

9. It were the respondents who filed the probate petition before the District Judge, Delhi in the year 1970 to which the objections were filed by the present appellant under Section 263 of the Indian Succession Act and the same were dismissed.

10. With regard to the contention of the learned counsel for the appellant, that the present suit is barred by limitation, the case of the appellant is that he is in continuous possession since long but there is no specific plea of disclaiming the titles of the respondents from a particular date, hostile assertion thereof and of setting adverse possession from a particular date to the knowledge of the respondents and their acquiescence.

11. The trial court has given a finding to this effect that

no evidence has been adduced by the appellant in support of his plea raised with regard to the adverse possession and in fact the appellant has miserably failed to place on record any documents to show that he had actually been in possession of the suit premises for 15 years prior to the institution of the suit, in the year 1981.

12. In view of the concurrent finding of facts given by the trial court and the First Appellate Court, I do not find any reason to differ with the finding given by the courts below and no substantial question of law arises for consideration.

13. Hence, the present appeal is not maintainable and the same is hereby dismissed in limine.

V.B. GUPTA, J

March 30, 2007
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